

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Brian Whitaker**

Plaintiff,

v.

**San Francisco CDC LLC**, a  
Delaware Limited Liability Company  
Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: Americans With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Brian Whitaker complains of San Francisco CDC LLC, a  
Delaware Limited Liability Company; and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He suffers from a C-4 spinal cord injury. He is a quadriplegic. He uses a wheelchair for mobility.

2. Defendant San Francisco CDC LLC owned InterContinental San Francisco located at or about 888 Howard St, San Francisco, California, between January 2021 and March 2021.

3. Defendant San Francisco CDC LLC owns InterContinental San

1 Francisco ("Hotel") located at or about 888 Howard St, San Francisco,  
2 California, currently.

3 4. Plaintiff does not know the true names of Defendants, their business  
4 capacities, their ownership connection to the property and business, or their  
5 relative responsibilities in causing the access violations herein complained of,  
6 and alleges a joint venture and common enterprise by all such Defendants.  
7 Plaintiff is informed and believes that each of the Defendants herein is  
8 responsible in some capacity for the events herein alleged, or is a necessary  
9 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
10 the true names, capacities, connections, and responsibilities of the Defendants  
11 are ascertained.  
12

### 13 **JURISDICTION & VENUE:**

14 5. The Court has subject matter jurisdiction over the action pursuant to 28  
15 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
16 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

17 6. Pursuant to supplemental jurisdiction, an attendant and related cause  
18 of action, arising from the same nucleus of operative facts and arising out of  
19 the same transactions, is also brought under California's Unruh Civil Rights  
20 Act, which act expressly incorporates the Americans with Disabilities Act.

21 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
22 founded on the fact that the real property which is the subject of this action is  
23 located in this district and that Plaintiff's cause of action arose in this district.  
24

### 25 **FACTUAL ALLEGATIONS:**

26 8. Plaintiff went to the Hotel in January 2021 with the intention to avail  
27 himself of its goods or services and to assess the business for compliance with  
28 the disability access laws. Not only did Plaintiff personally encounter the

1 unlawful barriers in January 2021, he wanted to return and patronize the  
2 business but was specifically deterred subsequent to his original visit due to his  
3 actual personal knowledge of the barriers gleaned from his encounter with  
4 them.

5 9. The Hotel is a facility open to the public, a place of public  
6 accommodation, and a business establishment.

7 10. Unfortunately, on the date of the plaintiff's visit, the defendants failed  
8 to provide wheelchair accessible transaction counters in conformance with the  
9 ADA Standards as it relates to wheelchair users like the plaintiff.

10 11. The Hotel provides transaction counters to its customers but fails to  
11 provide any wheelchair accessible transaction counters.

12 12. A problem that plaintiff encountered is that the transaction counter was  
13 too high. While there was a lowered section of counter, the plaintiff was helped  
14 at the higher counter during his transaction. The plaintiff was helped at the  
15 higher counter because the point-of-sale machine did not reach the lowered  
16 counter. The manager on duty told the plaintiff that she would escalate his  
17 issue to her superiors. Unfortunately, that did not help plaintiff who had to  
18 conduct his transaction at the higher counter, which was about 48 inches in  
19 height.

20 13. When plaintiff's investigator returned in April 2021 to investigate, the  
21 point-of-sale machine was still located at the higher counter and the point-of-  
22 sale machine still could not reach the lowered counter.

23 14. Plaintiff believes that there are other features of the transaction  
24 counters that likely fail to comply with the ADA Standards and seeks to have  
25 fully compliant transaction counters for wheelchair users.

26 15. On information and belief, the defendants currently fail to provide  
27 wheelchair accessible transaction counters.

28 16. These barriers relate to and impact the plaintiff's disability. Plaintiff

1 personally encountered these barriers.

2 17. As a wheelchair user, the plaintiff benefits from and is entitled to use  
3 wheelchair accessible facilities. By failing to provide accessible facilities, the  
4 defendants denied the plaintiff full and equal access.

5 18. The failure to provide accessible facilities created difficulty and  
6 discomfort for the Plaintiff.

7 19. The defendants have failed to maintain in working and useable  
8 conditions those features required to provide ready access to persons with  
9 disabilities.

10 20. The barriers identified above are easily removed without much  
11 difficulty or expense. They are the types of barriers identified by the  
12 Department of Justice as presumably readily achievable to remove and, in fact,  
13 these barriers are readily achievable to remove. Moreover, there are numerous  
14 alternative accommodations that could be made to provide a greater level of  
15 access if complete removal were not achievable.

16 21. Plaintiff will return to the Hotel to avail himself of its goods or services  
17 and to determine compliance with the disability access laws once it is  
18 represented to him that the Hotel and its facilities are accessible. Plaintiff is  
19 currently deterred from doing so because of his knowledge of the existing  
20 barriers and his uncertainty about the existence of yet other barriers on the  
21 site. If the barriers are not removed, the plaintiff will face unlawful and  
22 discriminatory barriers again.

23 22. Given the obvious and blatant nature of the barriers and violations  
24 alleged herein, the plaintiff alleges, on information and belief, that there are  
25 other violations and barriers on the site that relate to his disability. Plaintiff will  
26 amend the complaint, to provide proper notice regarding the scope of this  
27 lawsuit, once he conducts a site inspection. However, please be on notice that  
28 the plaintiff seeks to have all barriers related to his disability remedied. See

*Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site, he can sue to have all barriers that relate to his disability removed regardless of whether he personally encountered them).

**I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

23. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

24. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the

1 maximum extent feasible, the path of travel to the altered area and  
 2 the bathrooms, telephones, and drinking fountains serving the  
 3 altered area, are readily accessible to and usable by individuals  
 4 with disabilities. 42 U.S.C. § 12183(a)(2).

5 25. When a business provides facilities such as transaction counters, it must  
 6 provide accessible transaction counters.

7 26. Here, accessible transaction counters have not been provided in  
 8 conformance with the ADA Standards.

9 27. The Safe Harbor provisions of the 2010 Standards are not applicable  
 10 here because the conditions challenged in this lawsuit do not comply with the  
 11 1991 Standards.

12 28. A public accommodation must maintain in operable working condition  
 13 those features of its facilities and equipment that are required to be readily  
 14 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

15 29. Here, the failure to ensure that the accessible facilities were available  
 16 and ready to be used by the plaintiff is a violation of the law.

17  
 18 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
 19 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
 20 Code § 51-53.)

21 30. Plaintiff repleads and incorporates by reference, as if fully set forth  
 22 again herein, the allegations contained in all prior paragraphs of this  
 23 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
 24 that persons with disabilities are entitled to full and equal accommodations,  
 25 advantages, facilities, privileges, or services in all business establishment of  
 26 every kind whatsoever within the jurisdiction of the State of California. Cal.  
 27 Civ. Code §51(b).

28 31. The Unruh Act provides that a violation of the ADA is a violation of the

1 Unruh Act. Cal. Civ. Code, § 51(f).

2 32. Defendants' acts and omissions, as herein alleged, have violated the  
3 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's  
4 rights to full and equal use of the accommodations, advantages, facilities,  
5 privileges, or services offered.

6 33. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
7 discomfort or embarrassment for the plaintiff, the defendants are also each  
8 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
9 (c).)

10  
11 **PRAYER:**

12 Wherefore, Plaintiff prays that this Court award damages and provide  
13 relief as follows:

14 1. For injunctive relief, compelling Defendants to comply with the  
15 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
16 plaintiff is not invoking section 55 of the California Civil Code and is not  
17 seeking injunctive relief under the Disabled Persons Act at all.


18 2. For equitable nominal damages for violation of the ADA. See  
19 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)  
20 and any other equitable relief the Court sees fit to grant.

21 3. Damages under the Unruh Civil Rights Act, which provides for actual  
22 damages and a statutory minimum of \$4,000 for each offense.

23 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
24 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

1 Dated: April 9, 2021

CENTER FOR DISABILITY ACCESS

2  
3 By: 

4 Amanda Seabock, Esq.  
5 Attorney for plaintiff  
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